IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 555 of 2007.

Decided on: 12.09.2007.

Vijay Kumar. … … Petitioners.

Versus

The Executive Engineer & Another. … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the Petitioner: **Mr. Neel Kamal Sood, Advocate**

For the Respondents: **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocate Generals.**

Rajiv Sharma, Judge:

A challenge has been laid by the petitioner to the award passed by the H.P. Industrial Tribunal-cum-Labour Court, Shimla dated 14.11.2006 in reference No.68 of 2003.

The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the Labour Court:-

> **"Whether the termination of the services of Shri Vijay Kumar S/o Shri Sewak Ram, daily wages beldar by the Executive Engineer, I&PH Division, Solan, H.P. w.e.f. 1.5.2001 without complying with the provisions**

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[1] *Whether reporters of local papers may be allowed to see the judgment? No.*

of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back wages, service benefits, seniority and compensation the aggrieved workman is entitled to?"

In sequel to the reference made by the State Government, the petitioner (hereinafter referred to as the workman for convenience sake) had filed the claim petition before the Labour Court. The workman had primarily contended before the Labour Court that he was appointed as daily rated beldar by the employer in the month of June, 1997, but he has been retrenched without following the mandatory provisions of the Industrial Disputes Act,1947 (hereinafter referred to as the Act) with effect from 1st May, 2001. He had also contended before the Labour Court that four workmen, namely, Om Parkash, Med Ram, Sunil Kumar and Yoginder Singh were junior to him, but were retained by the employer while retrenching him on 1st May, 2001. The claim filed by the petitioner was contested by the employer by filing a detailed reply. The principal stand of the employer before the Labour Court was that the workman had not completed 240 days and the principle of "first come last go" was complied strictly. The workman had filed the detailed rejoinder to the reply filed by the employer. The Labour Court on the basis of the evidence led by the parties had answered the reference in negative on 14.11.2006.

Mr. Neel Kamal Sood had strenuously argued that the workman had completed 232 days in a block of 12 calendar months preceding his retrenchment as per Annexure P-8. He

had further contended that the workman was given artificial breaks in the months of September and October, 2000 and March, 2001 due to which he could not complete 240 days. He also contended that the Labour Court had failed to take into consideration the specific plea raised by the workman that the persons junior to him were retained as per detail given in statement of claim at the time of his retrenchment. The learned Advocate General had supported the award dated 14.11.2006 passed by the Labour Court.

I have heard the learned counsel for the parties and have gone through the record.

The workman was engaged as daily rated beldar with effect from 1st July, 1997. As per Annexure P-8 he had completed 109 days in the year 1997, 180 days in the year 1998, 178 days in 1999, 231 days in 2000 and 230 days in a block of 12 calendar months preceding his retrenchment, i.e. 1st May, 2001. It is thus clear that he had not completed 240 days as required under Section 25-B of the Act. Thus, the finding recorded by the Labour Court to this effect is up-held.

Now the Court has to consider whether the persons junior to him were retained at the time of his retrenchment effected on 1st May, 2001 or not. The workman has given the names of four workmen who were junior to him in his statement of claim, namely, Shri Om Parkash, Med Ram, Sunil Kumar and Yoginder Singh. The workman had also appeared as PW-1 before the Labour Court and testified that persons, namely, Om Parkash,

Med Ram, Sunil Kumar and Yoginder Singh were retained by the employer while retrenching him. There was no cross-examination by the employer on this aspect.

So far as Om Parkash is concerned, he was working as Chowkidar and the petitioner had been working as beldar. The seniority of Chowkidars and beldars is being maintained separately by the employer. Now the Court has to see the case of the workman vis-à-vis Shri Med Ram and Sunil Kumar. The workman was engaged on 1st July, 1997 as per Annexure P-8. Shri Med Ram was engaged on 1st November, 1997 as Per Annexure P-12 and Shri Sunil Kumar was engaged on 1st November, 1997 as per Annexure P-13. The workman has been retrenched on 1st May, 2001 while retaining Shri Med Ram and Sunil Kumar in violation of the provisions of Section 25-G of the Act. Since the persons junior to the workman have been retained while retrenching him, he was entitled to get protection under Section 25-G of the Act even though he had not completed 240 days preceding a block of 12 calendar months at the time of his retrenchment.

Their Lordships of the Hon'ble Supreme Court have held in ***Central Bank of India vesus S. Satyam and Others, (1996) 5 SCC 419*** that:

> **"Chapter V-A deals with all retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined**

only to workman who have been in continuous service for not less than one year, covered by Section 25-F.

The plea of learned Advocate General that Med Ram and Sunil Kumar had completed 240 days in the month of January, 2001 is not relevant for determining the entitlement of the petitioner to be protected under Section 25-G of the Act. So far as Shri Yoginder is concerned, though his name has been specifically given in the statement of claim, but as per the reply filed by the employer, he was engaged in the month of May, 1996 and the petitioner has been engaged in the month of July, 1997. Accordingly, the finding recorded by the Labour Court that no persons junior to the petitioner were retained, is perverse and is liable to be interfered with.

The upshot of the above discussion is that the workman has not completed 240 days in a block of 12 calendar months at the time of his retrenchment, i.e. 1st May, 2001. The employer had retained the persons junior to the petitioner, namely Shri Med Ram and Sunil Kumar, thus violating the provisions of Section 25-G of the Act.

Accordingly, this writ petition is allowed and the award dated 14.11.2006 is modified to the extent that the workman will be held entitled to reinstatement, but without back wages since he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. No order as to costs.

(Rajiv Sharma) Judge.

September 12, 2007 *(sck).*